

AMENDED IN ASSEMBLY JUNE 5, 2006

AMENDED IN SENATE MAY 4, 2006

AMENDED IN SENATE APRIL 6, 2006

SENATE BILL

No. 1560

Introduced by Senator Battin

February 23, 2006

An act to amend Section 1363.03, *1365.2*, and *1378* of the Civil Code, relating to common interest developments, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1560, as amended, Battin. Common interest developments: governance.

(1) The Davis-Stirling Common Interest Development Act governs the establishment and management of common interest developments. These provisions require that a common interest development be managed by an association and that elections related to the governance or administration of the common interest development conform to specified requirements. Existing law authorizes a member of an association to bring a civil action to enforce his or her rights and authorizes a court to impose a civil penalty of up to \$500 for a violation of the provisions governing elections.

This bill would revise provisions governing the conduct of elections in a common interest development. Among other things, the bill would require an association to adopt rules to allow one or more inspectors to appoint or oversee independent 3rd parties to *verify signatures and* count and tabulate votes, specify that a quorum shall only be required if so stated in the governing documents of the

association or other provision of law, *permit a ballot received by the inspector of elections to be treated as a member present for purposes of a quorum*, authorize a secret ballot to be distributed and voted upon by the membership without a meeting, and impose other requirements relating to proxies and secret ballots, as specified.

(2) That law requires the association of a common interest development to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative. That law permits the association to withhold or redact information from the association records regarding interior architectural plans and security features for individual homes. That law prohibits the association or an officer, director, employee, agent or volunteer of the association from being liable for damages for failing to withhold or redact information unless the failure to withhold or redact information was intentional or negligent.

This bill would revise and recast those provisions to permit the association to withhold or redact information from the association records regarding architectural plans or submittals for individual homes, including security features, subject to the authority of the association to show those plans to an impacted neighbor, as defined by association rules, or permit that impacted neighbor to inspect those plans, as specified. This bill would additionally prohibit a third party from being liable for damages for failing to withhold or redact information unless the failure to withhold or redact information was intentional or negligent. This bill would permit the associate to deliver documents by electronic transmission or machine-readable storage if those records are transmitted in a redacted format, as specified.

(3) That law provides that, if a common interest development association's governing documents require association approval before an owner may make a physical change to the owner's separate interest or to the common area, the association shall satisfy specified requirements in reviewing a proposed change, including providing a fair, reasonable, and expeditious procedure for making its decision and making a decision on a proposed change in writing.

This bill would require, if the association grants a variance from the association's published architectural guidelines or standards, the association to publish the decision granting the variance and the reasons for that decision in the open session minutes of the board of directors meeting after the variance is granted.

The bill would declare that it is to take effect immediately as an urgency statute, but its *certain* provisions would become operative on July 1, 2006.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1363.03 of the Civil Code is amended
2 to read:

3 1363.03. (a) An association shall adopt rules, in accordance
4 with the procedures prescribed by Article 4 (commencing with
5 Section 1357.100) of Chapter 2, that do all of the following:

6 (1) Ensure that if any candidate or member advocating a point
7 of view is provided access to association media, newsletters, or
8 Internet Web sites during a campaign, for purposes that are
9 reasonably related to that election, equal access shall be provided
10 to all candidates and members advocating a point of view,
11 including those not endorsed by the board, for purposes that are
12 reasonably related to the election. The association shall not edit
13 or redact any content from these communications, but may
14 include a statement specifying that the candidate or member, and
15 not the association, is responsible for that content.

16 (2) Ensure access to the common area meeting space, if any
17 exists, during a campaign, at no cost, to all candidates, including
18 those who are not incumbents, and to all members advocating a
19 point of view, including those not endorsed by the board, for
20 purposes reasonably related to the election.

21 (3) Specify the qualifications for candidates for the board of
22 directors and any other elected position, and procedures for the
23 nomination of candidates, consistent with the governing
24 documents. A nomination or election procedure shall not be
25 deemed reasonable if it disallows any member of the association
26 from nominating himself or herself for election to the board of
27 directors *and having his or her name placed on the ballot*.

28 (4) Specify the qualifications for voting, the voting power of
29 each membership, the authenticity, validity, and effect of proxies,
30 and the voting period for elections, including the times at which
31 polls will open and close, consistent with the governing
32 documents.

1 (5) Specify a method of selecting one or three independent
2 third parties as inspector, or inspectors, of election utilizing one
3 of the following methods:

4 (A) Appointment of the inspector or inspectors by the board.

5 (B) Election of the inspector or inspectors by the members of
6 the association.

7 (C) Any other method for selecting the inspector or inspectors.

8 (6) Allow the inspector, or inspectors, to appoint and oversee
9 additional persons *to verify signatures and to count and tabulate*
10 votes as the inspector or inspectors deem appropriate, provided
11 that the persons are independent third parties.

12 (b) Notwithstanding any other law or provision of the
13 ~~governing documents, all items legally requiring a vote of the~~
14 ~~membership including, but not limited to, assessments, selection~~
15 ~~and removal of members of the association board of governing~~
16 *documents, elections regarding assessments legally requiring a*
17 *vote, election and recall of members of the association board of*
18 directors, amendments to the governing documents, or the grant
19 of exclusive use of common area property pursuant to Section
20 1363.07 shall be held by secret ballot in accordance with the
21 procedures set forth in this section. A quorum shall be required
22 only if so stated in the governing documents of the association or
23 other provisions of law. *If a quorum is required by the governing*
24 *documents, each ballot received by the inspector of elections*
25 *shall be treated as a member present at a meeting for purposes of*
26 *establishing a quorum.* An association shall allow for cumulative
27 voting using the secret ballot procedures provided in this section,
28 if cumulative voting is provided for in the governing documents.

29 (c) (1) The association shall select an independent third party
30 or parties as an inspector of election. The number of inspectors of
31 election shall be one or three.

32 (2) For the purposes of this section, an independent third party
33 includes, but is not limited to, a volunteer poll worker with the
34 county registrar of voters, a licensee of the California Board of
35 Accountancy, or a notary public. An independent third party may
36 be a member of the association, but may not be a member of the
37 board of directors or a candidate for the board of directors or
38 related to a member of the board of directors or a candidate for
39 the board of directors. An independent third party may not be a
40 person, *business entity, or subdivision of a business entity* who is

1 currently employed or under contract to the association for any
2 compensable services unless expressly authorized by rules of the
3 association adopted pursuant to paragraph (5) of subdivision (a).

4 (3) The inspector or inspectors of election shall do all of the
5 following:

6 (A) Determine the number of memberships entitled to vote
7 and the voting power of each.

8 (B) Determine the authenticity, validity, and effect of proxies,
9 if any.

10 (C) Receive ballots.

11 (D) Hear and determine all challenges and questions in any
12 way arising out of or in connection with the right to vote.

13 (E) Count and tabulate all votes.

14 (F) Determine when the polls shall close.

15 (G) Determine the ~~result~~ *tabulated results* of the election.

16 (H) Perform any acts as may be proper to conduct the election
17 with fairness to all members in accordance with this section, the
18 Corporations Code, and all applicable rules of the association
19 regarding the conduct of the election that are not in conflict with
20 this section.

21 (4) An inspector of election shall perform his or her duties
22 impartially, in good faith, to the best of his or her ability, and as
23 expeditiously as is practical. If there are three inspectors of
24 election, the decision or act of a majority shall be effective in all
25 respects as the decision or act of all. Any report made by the
26 inspector or inspectors of election is prima facie evidence of the
27 facts stated in the report.

28 ~~(d) (1) Proxies as described in Section 7613 of the~~
29 ~~Corporations Code shall not be interpreted to be a ballot as~~
30 ~~described in this section. An association may continue to use and~~
31 ~~to accept proxies if permitted or required by the bylaws of the~~

32 *(d) (1) For purposes of this section, the following definitions*
33 *shall apply:*

34 (A) “Proxy” means a written authorization signed by a
35 member or the agent of the member that gives another member
36 or members the power to vote on behalf of that member.

37 (B) “Signed” means the placing of the member’s name on the
38 proxy (whether by manual signature, typewriting, telegraphic
39 transmission, or otherwise) by the member or agent of the
40 member.

(2) *Proxies shall not be construed or used in lieu of a ballot. An association may use proxies if permitted or required by the bylaws of the association and if those proxies meet the requirements of this article, other laws, and the association's governing documents, but the association shall not be required to prepare or distribute proxies pursuant to this section. A proxy shall not be used in lieu of a ballot at a meeting.*

~~(2)~~

(3) Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the member's vote by secret ballot, ~~unless the~~. *The proxy is may be revoked by the member prior to the receipt of the ballot by the inspector of elections or his or her designee as described in Section 7613 of the Corporations Code.*

(e) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote.

(2) The second envelope is addressed to the inspector or inspectors of election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of election. The member may request a receipt for delivery.

(f) All votes shall be counted and tabulated by the inspector or inspectors of election *or his or her designee* in public at a properly noticed open meeting of the board of directors or members. Any candidate or other member of the association may

1 witness the counting and tabulation of the votes. No person,
2 including a member of the association or an employee of the
3 management company, shall open or otherwise review any ballot
4 prior to the time and place at which the ballots are counted and
5 tabulated. The inspector of election, or his or her designee, may
6 verify the member's information and signature on the outer
7 envelope prior to the election. Once a secret ballot is received by
8 the inspector of elections ~~or his or her designee~~, it shall be
9 irrevocable.

10 (g) The *tabulated* results of the election shall be promptly
11 reported to the board of directors of the association and shall be
12 recorded in the minutes of the next meeting of the board of
13 directors and shall be available for review by members of the
14 association. Within 15 days of the election, the board shall
15 publicize the *tabulated* results of the election in a communication
16 directed to all members.

17 (h) The sealed ballots at all times shall be in the custody of the
18 inspector or inspectors of election or at a location designated by
19 the inspector or inspectors until after the tabulation of the vote,
20 *and until the time allowed by the governing documents for*
21 *challenging the election has expired*, ~~at which time custody shall~~
22 ~~be transferred to the association.~~

23 (i) ~~Notwithstanding any other provision of law, the~~
24 ~~association's governing documents may provide for the~~
25 ~~nomination of candidates from the floor of membership meetings~~
26 ~~or nomination by any other manner.~~

27 (j) ~~After tabulation, election ballots shall be stored by the~~
28 ~~association in a secure place for no less than one year after the~~
29 ~~date of the election. In the event of a recount or other challenge~~
30 ~~to the election process, the association shall, upon written~~
31 ~~request, make the ballots available for inspection and review by~~
32 ~~association members or their authorized representatives. Any~~
33 ~~recount shall be conducted in a manner that shall preserve the~~
34 ~~confidentiality of the vote.~~

35 (k) ~~Except as provided in subdivision (f) and in the governing~~
36 ~~documents, a secret ballot may be distributed and voted upon by~~
37 ~~the membership without a meeting.~~

38 *which time custody shall be transferred to the association. If*
39 *there is a recount or other challenge to the election process, the*
40 *inspector or inspectors of election shall, upon written request,*

1 *make the ballots available for inspection and review by an*
2 *association member or his or her authorized representative. Any*
3 *recount shall be conducted in a manner that preserves the*
4 *confidentiality of the vote.*

5 *(i) After the transfer of the ballots to the association, the*
6 *ballots shall be stored by the association in a secure place for no*
7 *less than one year after the date of the election.*

8 *(j) Notwithstanding any other provision of law, the rules*
9 *adopted pursuant to this section may provide for the nomination*
10 *of candidates from the floor of membership meetings or*
11 *nomination by any other manner. Those rules may permit*
12 *write-in candidates for ballots.*

13 *(k) Except for the meeting to count the votes required in*
14 *subdivision (f), an election may be conducted entirely by mail*
15 *unless otherwise specified in the governing documents.*

16 *(l) The provisions of this section apply to both incorporated*
17 *and unincorporated associations, notwithstanding any contrary*
18 *provision of the governing documents.*

19 *(m) The procedures set forth in this section shall apply to*
20 *votes cast directly by the membership, but do not apply to votes*
21 *cast by delegates or other elected representatives.*

22 *(n) In the event of a conflict between this section and the*
23 *provisions of the Nonprofit Mutual Benefit Corporation Law*
24 *(Part 3 (commencing with Section 7110) of Division 2 of Title 1*
25 *of the Corporations Code) relating to elections, the provisions of*
26 *this section shall prevail.*

27 *(o) The amendments made to this section by the act adding*
28 *this subdivision shall become operative on July 1, 2006.*

29 *SEC. 2. Section 1365.2 of the Civil Code is amended to read:*

30 *1365.2. (a) For the purposes of this section, the following*
31 *definitions shall apply:*

32 *(1) "Association records" means all of the following:*

33 *(A) Any financial document required to be provided to a*
34 *member in Section 1365.*

35 *(B) Any financial document or statement required to be*
36 *provided in Section 1368.*

37 *(C) Interim—unaudited financial statements, periodic or as*
38 *compiled, containing any of the following:*

39 *(i) Balance sheet.*

40 *(ii) Income and expense statement.*

1 (iii) Budget comparison.

2 (iv) General ledger. A “general ledger” is a report that shows
3 all transactions that occurred in an association account over a
4 specified period of time.

5 The records described in this ~~paragraph~~ *subparagraph* shall be
6 prepared in accordance with ~~generally accepted accounting~~
7 ~~principles~~ *an accrual or modified accrual basis of accounting*.

8 (D) Executed contracts not otherwise privileged under law.

9 (E) Written board approval of vendor or contractor proposals
10 or invoices.

11 (F) State and federal tax returns.

12 (G) Reserve account balances and records of payments made
13 from reserve accounts.

14 (H) Agendas and minutes of meetings of the members, the
15 board of directors and any committees appointed by the board of
16 directors *pursuant to Section 7212 of the Corporations Code*;
17 excluding, however, agendas, minutes, and other information
18 from executive sessions of the board of directors as described in
19 Section 1363.05.

20 (I) (i) Membership lists, including name, property address,
21 and mailing address, if the conditions set forth in clause (ii) are
22 met and except as otherwise provided in clause (iii).

23 (ii) The member requesting the list shall state the purpose for
24 which the list is requested which purpose shall be reasonably
25 related to the requester’s interest as a member. If the association
26 reasonably believes that the information in the list will be used
27 for another purpose, it may deny the member access to the list. If
28 the request is denied, in any subsequent action brought by the
29 member under subdivision (f), the association shall have the
30 burden to prove that the member would have allowed use of the
31 information for purposes unrelated to his or her interest as a
32 member.

33 (iii) A member of the association may opt out of the sharing of
34 his or her name, property address, and mailing address by
35 notifying the association in writing that he or she prefers to be
36 contacted via the alternative process described in subdivision (c)
37 of Section 8330 of the Corporations Code. This opt-out shall
38 remain in effect until changed by the member.

39 (J) Check registers.

(2) “Enhanced association records” means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association, provided that the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request.

(b) (1) The association shall make available association records and enhanced association records for the time periods and within the timeframes provided in subdivisions (i) and (j) for inspection and copying by a member of the association, or the member’s designated representative. The association may bill the requesting member for the direct and actual cost of copying requested documents. The association shall inform the member of the amount of the copying costs before copying the requested documents.

(2) A member of the association may designate another person to inspect and copy the specified association records on the member’s behalf. The member shall make this designation in writing.

(c) (1) The association shall make the specified association records available for inspection and copying in the association’s business office within the common interest development.

(2) If the association does not have a business office within the development, the association shall make the specified association records available for inspection and copying at a place that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), or if the requesting member submits a written request directly to the association for copies of specifically identified records, the association may satisfy the requirement to make the association records available for inspection and copying by mailing copies of the specifically identified records to the member by first-class mail within the timeframes set forth in subdivision (j).

(4) The association may bill the requesting member for the direct and actual cost of copying and mailing requested

1 documents. The association shall inform the member of the
2 amount of the copying and mailing costs, and the member shall
3 agree to pay those costs, before copying and sending the
4 requested documents.

5 (5) In addition to the direct and actual costs of copying and
6 mailing, the association may bill the requesting member an
7 amount not in excess of ten dollars (\$10) per hour, and not to
8 exceed two hundred dollars (\$200) total per written request, for
9 the time actually and reasonably involved in redacting the
10 enhanced association records as provided in paragraph (2) of
11 subdivision (a). The association shall inform the member of the
12 estimated costs, and the member shall agree to pay those costs,
13 before retrieving the requested documents.

14 (d) (1) Except as provided in paragraph (2), the association
15 may withhold or redact information from the association records
16 for any of the following reasons:

17 (A) The release of the information is reasonably likely to lead
18 to identity theft. For the purposes of this section, “identity theft”
19 means the unauthorized use of another person’s personal
20 identifying information to obtain credit, goods, services, money,
21 or property. Examples of information that may be withheld or
22 redacted pursuant to this paragraph include bank account
23 numbers of members or vendors, social security or tax
24 identification numbers, and check, stock, and credit card
25 numbers.

26 (B) The release of the information is reasonably likely to lead
27 to fraud in connection with the association.

28 (C) The information is privileged under law. Examples include
29 documents subject to attorney-client privilege or relating to
30 litigation in which the association is or may become involved,
31 and confidential settlement agreements.

32 (D) The release of the information is reasonably likely to
33 compromise the privacy of an individual member of the
34 association.

35 (E) The information contains any of the following:

36 (i) Records of a-la-carte goods or services provided to
37 individual members of the association for which the association
38 received monetary consideration other than assessments.

1 (ii) Records of disciplinary actions, collection activities, or
2 payment plans of ~~homeowners~~ *members* other than the
3 ~~homeowner member~~ requesting the records.

4 (iii) Any person's personal identification information,
5 including, without limitation, social security number, tax
6 identification number, driver's license number, credit card
7 account numbers, bank account number, and bank routing
8 number.

9 (iv) Agendas, minutes, and other information from executive
10 sessions of the board of directors as described in Section
11 1363.05, except for executed contracts not otherwise privileged.
12 Privileged contracts shall not include contracts for maintenance,
13 management, or legal services.

14 (v) Personnel records other than the payroll records required to
15 be provided under paragraph (2).

16 (vi) ~~Interior architectural plans, including security features, for~~
17 ~~individual homes—~~*Any architectural plans or submittals,*
18 *including, but not limited to, security features, for individual*
19 *homes. Nothing in this clause shall limit an association's*
20 *authority to adopt rules requiring owners to show architectural*
21 *plans to impacted neighbors, as defined by those rules, as part of*
22 *the architectural application process or limit the ability of an*
23 *impacted neighbor to inspect those plans.*

24 (2) Except as provided by the attorney-client privilege, the
25 association may not withhold or redact information concerning
26 the compensation paid to employees, vendors, or contractors.
27 Compensation information for individual employees shall be set
28 forth by job classification or title, not by the employee's name,
29 social security number, or other personal information.

30 (3) No association, officer, director, employee, agent or
31 volunteer of an association shall be liable for damages to a
32 member of the association *or any third party* as the result of
33 identity theft or other breach of privacy because of the failure to
34 withhold or redact that member's information under this
35 subdivision unless the failure to withhold or redact the
36 information was intentional, willful, or negligent.

37 (4) If requested by the requesting ~~homeowner member~~, an
38 association that denies or redacts records shall provide a written
39 explanation specifying the legal basis for withholding or
40 redacting the requested records.

1 (e) (1) The association records, and any information from
2 them, may not be sold, used for a commercial purpose, or used
3 for any other purpose not reasonably related to a member's
4 interest as a member. An association may bring an action against
5 any person who violates this section for injunctive relief and for
6 actual damages to the association caused by the violation.

7 (2) This section may not be construed to limit the right of an
8 association to damages for misuse of information obtained from
9 the association records pursuant to this section or to limit the
10 right of an association to injunctive relief to stop the misuse of
11 this information.

12 (3) An association shall be entitled to recover reasonable costs
13 and expenses, including reasonable attorney's fees, in a
14 successful action to enforce its rights under this section.

15 (f) A member of an association may bring an action to enforce
16 the member's right to inspect and copy the association records. If
17 a court finds that the association unreasonably withheld access to
18 the association records, the court shall award the member
19 reasonable costs and expenses, including reasonable attorney's
20 fees, and may assess a civil penalty of up to five hundred dollars
21 (\$500) for the denial of each separate written request. A cause of
22 action under this section may be brought in small claims court if
23 the amount of the demand does not exceed the jurisdiction of that
24 court. A prevailing association may recover any costs if the court
25 finds the action to be frivolous, unreasonable, or without
26 foundation.

27 (g) The provisions of this section apply to any community
28 service organization or similar entity, as defined in paragraph (3)
29 of subdivision (c) of Section 1368, that is related to the
30 association, and this section shall operate to give a member of the
31 community service organization or similar entity a right to
32 inspect and copy the records of that organization or entity
33 equivalent to that granted to association members by this section.

34 (h) Requesting parties shall have the option of receiving
35 specifically identified records by electronic transmission or
36 machine-readable storage media as long as those records can be
37 transmitted in a redacted format that does not allow the records to
38 be altered. The cost of duplication shall be limited to the direct
39 cost of producing the copy of a record in that electronic format.
40 *The association may deliver specifically identified records by*

1 *electronic transmission or machine-readable storage media as*
2 *long as those records can be transmitted in a redacted format*
3 *that prevents the records from being altered.*

4 (i) The time periods for which specified records shall be
5 provided is as follows:

6 (1) Association records shall be made available for the current
7 fiscal year and for each of the previous two fiscal years.

8 (2) Minutes of member and board meetings shall be
9 permanently made available. If a committee has decisionmaking
10 authority, minutes of the meetings of that committee shall be
11 made available commencing January 1, 2007, and shall thereafter
12 be permanently made available.

13 (j) The timeframes in which access to specified records shall
14 be provided to a requesting member is as follows:

15 (1) Association records prepared during the current fiscal year,
16 within 10 business days following the association's receipt of the
17 request.

18 (2) Association records prepared during the previous two
19 fiscal years, within 30 calendar days following the association's
20 receipt of the request.

21 (3) Any record or statement available pursuant to Section 1365
22 or 1368, within the timeframe specified therein.

23 (4) Minutes of member and board meetings, within the
24 timeframe specified in subdivision (d) of Section 1363.05.

25 (5) Minutes of meetings of committees with decisionmaking
26 authority for meetings commencing on or after January 1, 2007,
27 within 15 calendar days following approval.

28 (6) Membership list, within the timeframe specified in Section
29 8330 of the Corporations Code.

30 (l) There shall be no liability pursuant to this section for an
31 association that fails to retain records for the periods specified in
32 subdivision (i) that were created prior to January 1, 2006.

33 (m) As applied to an association and its members, the
34 provisions of this section are intended to supersede the provisions
35 of Sections 8330 and 8333 of the Corporations Code to the extent
36 those sections are inconsistent.

37 (n) The provisions of this section shall not apply to any
38 common interest development in which separate interests are
39 being offered for sale by a subdivider under the authority of a
40 public report issued by the Department of Real Estate so long as

1 the subdivider or all subdividers offering those separate interests
2 for sale, or any employees of those subdividers or any other
3 person who receives direct or indirect compensation from any of
4 those subdividers, comprise a majority of the members of the
5 board of directors of the association. Notwithstanding the
6 foregoing this section shall apply to that common interest
7 development no later than 10 years after the close of escrow for
8 the first sale of a separate interest to a member of the general
9 public pursuant to the public report issued for the first phase of
10 the development.

11 (o) The section shall become operative on July 1, 2006.

12 *SEC. 3. Section 1378 of the Civil Code is amended to read:*

13 1378. (a) This section applies if an association's governing
14 documents require association approval before an owner of a
15 separate interest may make a physical change to the owner's
16 separate interest or to the common area. In reviewing and
17 approving or disapproving a proposed change, the association
18 shall satisfy the following requirements:

19 (1) The association shall provide a fair, reasonable, and
20 expeditious procedure for making its decision. The procedure
21 shall be included in the association's governing documents. The
22 procedure shall provide for prompt deadlines. The procedure
23 shall state the maximum time for response to an application or a
24 request for reconsideration by the board of directors.

25 (2) A decision on a proposed change shall be made in good
26 faith and may not be unreasonable, arbitrary, or capricious.

27 (3) Notwithstanding a contrary provision of the governing
28 documents, a decision on a proposed change may not violate any
29 governing provision of law, including, but not limited to, the Fair
30 Employment and Housing Act (Part 2.8 (commencing with
31 Section 12900) of Division 3 of Title 2 of the Government
32 Code), or a building code or other applicable law governing land
33 use or public safety.

34 (4) A decision on a proposed change shall be in writing. If a
35 proposed change is disapproved, the written decision shall
36 include both an explanation of why the proposed change is
37 disapproved and a description of the procedure for
38 reconsideration of the decision by the board of directors.

39 (5) If a proposed change is disapproved, the applicant is
40 entitled to reconsideration by the board of directors of the

1 association that made the decision, at an open meeting of the
2 board. This paragraph does not require reconsideration of a
3 decision that is made by the board of directors or a body that has
4 the same membership as the board of directors, at a meeting that
5 satisfies the requirements of Section 1363.05. Reconsideration by
6 the board does not constitute dispute resolution within the
7 meaning of Section 1363.820.

8 *(6) A decision to grant a variance from the architectural*
9 *standards in the declaration of the common interest development*
10 *or a variance from the association's published architectural*
11 *guidelines or standards and the reasons for that decision shall be*
12 *published in the open session minutes of the board of directors*
13 *meeting after the board grants the variance.*

14 (b) Nothing in this section authorizes a physical change to the
15 common area in a manner that is inconsistent with an
16 association's governing documents, unless the change is required
17 by law.

18 (c) An association shall annually provide its members with
19 notice of any requirements for association approval of physical
20 changes to property. The notice shall describe the types of
21 changes that require association approval and shall include a
22 copy of the procedure used to review and approve or disapprove
23 a proposed change.

24 ~~SEC. 2.~~

25 *SEC. 4.* This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or safety
27 within the meaning of Article IV of the Constitution and shall go
28 into immediate effect. The facts constituting the necessity are:

29 In order to ensure that these changes apply to elections
30 conducted by common interest developments as soon as possible,
31 it is necessary that this act take effect immediately.